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Before the
Federal Communications Commission
 Washington, DC

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. <u>93-107</u>
)	
DAVID A. RINGER)	File No. BPH-911230MA
)	
ASF BROADCASTING CORP.)	File No. BPH-911230MB
)	
WILBURN INDUSTRIES, INC.)	File No. BPH-911230MC
)	
SHELLEE F. DAVIS)	File No. BPH-911231MA
)	
OHIO RADIO ASSOCIATES)	File No. BPH-911231MC

For Construction Permit for an
 FM Station on Channel 280A in
 Westerville, OH

To: Administrative Law Judge
 Walter C. Miller

OPPOSITION TO MOTION TO ENLARGE ISSUES AGAINST SHELLEE F. DAVIS

Shellee F. Davis ("Davis"), by its attorney, hereby submits its opposition to the "Motion to Enlarge Issues Against Shellee F. Davis" ("Motion") filed by Wilburn Industries, Inc. on August 23, 1993.¹ With respect thereto, the following is stated.

Background

Davis filed her application in December 1991 after securing from Mid-Ohio Communications a commitment to lease to her its tower, its studio, and "some or all" of the equipment contained on a lengthy equipment list, which was all of the equipment previously used by WBBY-FM. Davis estimated her full three month expenses (including the \$6000

¹ Under Section 1.294 of the Commission's Rules, oppositions to motions to enlarge issues must be filed within ten days of the filing of the Motion and pursuant to Section 1.4(h), because the filing period was ten days or less, three additional days are allowed for filing the response. Therefore, Davis' Opposition is timely filed.

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Mid-Ohio lease payment and payment of a salary to herself) to be \$97,500, and her additional construction costs (e.g., to purchase a directional antenna and auxiliary power generating equipment which is not being supplied by Mid-Ohio, miscellaneous other costs and equipment, debt service, and prosecuting and engineering costs) to be \$102,392, for a total anticipated budget of \$199,892. However, when necessarily including into the budget the costs for additional equipment to construct the station which "may not" be made available Mid-Ohio, Davis' total budget came to a total of \$289,496.² Davis initially had available to her \$300,000 in committed funds (consisting of a reasonable assurance of \$250,000 from the Huntington Bank and \$50,000 from herself) to accommodate even her worst-case budget. Later, in order to ensure the availability of additional funds to operate beyond simply three months, Davis increased the amount of funds available to her from Huntington Bank to \$350,000³ which, when coupled with the funds she personally has committed in contribute to the project, provides her with the availability of funding in the amount of \$400,000, which is over \$100,000 over even her worst-case budgetary needs.⁴ Conversely, if (as is believed

² Davis' worst-case budget provides for \$54,909 for RF Generating Equipment, \$5063 for Monitoring and Test Equipment, and \$38,631.50 for Program Origination Equipment which, when added to the \$38,000 for Emergency Power Generating Equipment, \$15,000 for Miscellaneous Equipment, \$24,392 to Purchase and Install an Directional Antenna, \$20,000 for Prosecution Costs, \$5000 cost of debt service, and Davis' \$29,500 monthly operations cost/monthly site-studio rental figure (which excludes payment of a salary to herself), adds up to the \$289,496 figure (actually a \$289,495.50 figure) included in her application.

³ This figure was listed as \$300,000 in Davis' March 9, 1992 amendment which was filed as a matter of right under the rules. As seen in Attachment 2, the letter was in actuality in the amount of \$350,000. See Attachment 2.

⁴ Insofar as Davis filed an amendment as a matter of right, under Scioto Broadcasters, Limited Partnership, 6 FCC Rcd 1893 (1991), recon. denied, 6 FCC Rcd 4626 (1991), the "B" cut-off date funding proposal would be the relevant funding to examine.

will be the case⁵) most or all of the Mid-Ohio equipment can indeed still be leased from Mid-Ohio at the time the permit is awarded in this proceeding, assurances for funding which are over \$200,000 in excess of her immediate budgetary needs have been secured. In either event, Davis has secured assurances of sufficient funds to construct and initially operate her station.⁶

Reasonable Assurance/Financial Qualifications Issue

Wilburn speculates that Davis' letter of assurance from the Huntington Bank is only an "accommodation letter" which cannot be credited. Wilburn's speculation is not accurate. Mr. Ralph Frasier, who is an Executive Vice President and General Counsel of the Huntington Bank confirms as follows:

I was first approached in December, 1991 by Shellee Davis concerning the application she was intending to submit for former Station WBBY(FM) in Westerville, and the availability of funding from Huntington Bank to finance that project. Ms. Davis and her husband, Reginald Davis, have banked with this institution for a number of years. I personally am well acquainted with Ms. Davis' finances, the success of her past business and her track record in running a successful business, and her standing and reputation in the community. I also am familiar generally with what had been stature and stability of Station WBBY in the Columbus community during the period it was operating. As I indicated in the letter that I wrote to Ms. Davis, this institution has been anxious to provide financing to Ms. Davis for any of her personal and business endeavors. The

⁵ Davis has toured the Mid-Ohio facility, and has confirmed that the equipment continues to be owned by Mid-Ohio at this time, and in being maintained in excellent condition.

⁶ Although BancOhio initially also was approached (Motion at 3, 8), no loan request was seriously pursued with that institution (Attachment 2 at TR 42), due to Ms. Davis' past dissatisfaction with that institution. For this reason, even in the event this Motion were to be granted, Davis opposes any proposed deposition of Paul Casey, Manager of BancOhio. Cf. Motion at 11.

Davis proposal was all the more interesting and attractive in light of the recent history of a prior operator having successfully operated in the same facility, on the same frequency and in much the same market.

In order to verify the ability of Huntington Bank to provide the funding that was being requested, at the time of her request I requested that Ms. Davis provide information to me concerning the level of financing she would need and information concerning her current finances in the form of a current balance sheet. That information all was provided. In addition, Ms. Davis and I discussed the project and some of her plans for the station. As a Senior Officer with Huntington, I am very familiar with the institution's lending criteria. Moreover, Ms. Davis' proposal and financial information has been reviewed with a seasoned loan officer. Based upon that evaluation, it was the determination at the time that inquiry was made, and remains the understanding of the Huntington today, that funding can and will be provided in accordance with the level of financing requested in the December 27, 1991 letter, and in fact can be provided at the level of financing stated in the March 9, 1992 letter (see attachments). This decision was made with the understanding that Ms. Davis intends, if possible, to lease a large portion of the equipment for the station (which may reduce the amount of loan that will be needed), and that the FCC license may not permissibly be subject to a security interest by this institution. Ms. Davis has kept me informed of the progress of the application, and as I repeatedly have assured her since her request was approved, the anticipated availability of funding has remained in place.

* * * *

The attached letters correctly reflect intentions of this institution to provide funding to Ms. Davis under the conditions stated therein. This institution has not in the past, nor will in the future, issue any documents which are false, or which fail to accurately reflect the intentions of this institution.

Attachment 1.

Therefore, Wilburn's speculation is wholly incorrect. In order to determine that an applicant has "reasonable assurance" of "committed sources of funds" from a lending

institution, the Review Board stated that the factors that are to be considered are as follows:

Whether (1) the bank has a long and established relationship with the borrower sufficient to infer that the lender is thoroughly familiar with the borrower's assets, credit history, current business plan, and similar data. See Multi-State Communications, Inc., v. FCC, 590 F.2d 1117 (D.C. Cir. 1978); or, (2) the prospective borrower has provided the bank with such data, and the bank is sufficiently satisfied with this financial information (e.g., collateral guarantees, see Chapman Radio and Television Co., 70 FCC 2d 2063, 2072 (1979) that, ceteris paribus, a loan in the stated amount would be forthcoming, and that the borrower is fully familiar with, and accepts the terms and conditions of the proposed loan (e.g., payment period, interest rate, collateral requirements, and other basic terms).

Scioto Broadcasters, 5 FCC Rcd 5158, 5160 (Rev. Bd. 1990). As the Review Board has stated even more recently:

In the absence of ... a long-term relationship, a borrower need establish that it provided the bank with financial data upon which the bank could review the loan request, that the bank did so, and the bank is satisfied with the data.

A.P. Walter, Jr., 6 FCC Rcd 875, 877 (Rev. Bd. 1991).

As seen, Davis passes both of these tests, insofar as she has an established long-term banking relationship with the lending institution and moreover, has supplied that institution with information sufficient for it to review and tentatively approve the funding request. Davis already has passed initial muster with the bank, and her background, her finances, and the intended purpose of the loan satisfy the Huntington Bank's credit criteria -- therefore, there was no need to "discuss" the criteria with Ms. Davis. Cf. Motion at 3, 8.⁷

⁷ This is in stark contrast to the facts contained in Isis Broadcast Group, 7 FCC Rcd 5125 (Rev. Bd. 1992), a case relied upon by Wilburn. See Motion at 8 n.11. In Isis, the bank in question's representative "said the bank had not received sufficient information to make any

Moreover, all information requested was supplied -- therefore there was no need to supply the bank with her specific budgetary breakdown. Cf. Motion at 3, 8. Wilburn's claim that Davis will not possess assets which can be subject to a security interest by the Bank also is inaccurate -- in the event no Mid-Ohio equipment is provided to Davis, she will purchase and own nearly \$125,000 worth of equipment and will be initially borrowing \$240,000, all of which could be amply collateralized by the value of the equipment, the station's future accounts receivable,⁸ and by her personal assets -- in the event the lease equipment remains available at grant she will purchase and own over \$60,000 of equipment but would need initially to borrow only approximately \$150,000, which even more easily also could easily be collateralized by the value of the equipment, the future accounts receivable, and by her assets. Cf. Motion 9. Finally, Wilburn's claim that the loan "exceeds her entire net worth" (Motion at 9), is incorrect. As established at the deposition, the balance sheet does not

decision about a loan." Id. at 5129 ¶ 16. In contrast, here the applicant's Banker has confirmed that the bank had sufficient information to make a tentative decision about the requested loan.

⁸ Wilburn's assertion at footnote 9 of the Motion, whereby it claims that "it is obvious that a station unable to meet its periodic bank payments would not have accounts receivable sufficient to satisfy the entire loan" makes no sense. First of all, in this instance, "accounts receivable" are not the only collateral being required by Huntington Bank, so they would not independently need to be of a sufficient magnitude to protect the entire loan, alone. Moreover, Wilburn's statement conceptually makes no sense. "Accounts receivable" is uncollected money. In many instances in the broadcast field it is precisely because money has not yet been collected that a station is unable to "meet...periodic bank payments," despite the fact that the station may have hundreds of thousands of dollars of uncollected funds on its books which eventually will in fact be collectable in the future. In such instances, the bank has a first lien on those uncollected funds, which serves to protect and serve as collateral for any loans that have been provided. When the funds are paid by or collected from the station's advertisers, they then go directly to the bank to pay off the loan.

include the value of her 100% ownership of Britt Business Systems.⁹ See Attachment 2 at TR 209. Generally, Wilburn loses sight of the fact that this is not a typical start-up facility - operations on that frequency in the Westerville market has an established history of performance within the community, which obviously reduces the "riskiness" of the loan.¹⁰

Davis is an established businessperson in the Columbus-area business community. She has received a valid and accurate assurance of the availability of funds to construct and operate her proposed facility. In denying a request in another proceeding to add a financial issue (and affirming the "reasonable assurance" standard), the Commission recently stated that no financial issue is warranted where:

the bank letter reflects sufficient dialogue between [the applicant] and the bank to establish that it has a present, firm intention to make the proposed loan, future conditions permitting. Thus, in the absence of specific evidence of the bank's unfamiliarity with (and failure to review) [the applicant's] financial qualifications, the cases cited by petitioners do not support the addition of a financial issue against [the applicant].

Liberty Communications, a Limited Partnership, 8 FCC Rcd 4264, 4265 ¶ 6 (June 25, 1993). Here, there is specific evidence both that financial information was supplied, and

⁹ As information submitted in Ms. Davis' Hearing Exhibits shows, Britt Business Systems is an established business which has consistently been ranked as one of the top Xerox dealerships nationally, and which will be sold in the event Ms. Davis prevails in this proceeding. The business has no debts (other than debts owed personally to Ms. Davis). As noted at the hearing, in 1992 Britt had an annual net positive cash flow of approximately \$80,000. Using even a typical multiplier of four-to-five times cash-flow which has been used for the sale of similar businesses, it can be estimated that the value of her business is in the neighborhood of \$300,000 - \$400,000.

¹⁰ Ms. Davis discussed with Mr. Frasier the fact that she was pursuing the right to supplant the (then) current operator of WBBY(FM) (TR 49-50) and they discussed the value of the station to the community.

that it has been reviewed. Similarly, in Annette B. Godwin, 8 FCC Rcd 4098 (Rev. Bd. June 17, 1993), the Board found that no issue was warranted where, as here, an applicant "supplied [the bank] with the ordinary loan request documentation and data; specific terms were exchanged; and the bank's vice president later expressly reaffirmed its positive intent when the bank letter was questioned." Id. at 4101 ¶ 8. The Review Board has stated that the Commission will not second-guess the willingness of a financial institution to make a loan. Harrison County Broadcasting Co., 6 FCC Rcd 5819, 5821 ¶ 14 (Rev. Bd. 1991). Based upon all of this binding precedent, no issue is warranted in this case, as well.

As to Wilburn's claim that Davis has not yet affirmatively committed herself to accepting the terms proposed by the Huntington Bank, Wilburn is incorrect. Wilburn mischaracterizes Davis' testimony.¹¹ She never has stated that the bank's proposed terms are affirmatively unacceptable -- all she has stated is that she has not yet decided whether she will need or agree to secure the loan with "personal property" (such as her home) in particular, or whether she will instead make available alternative property to secure her personal commitment. Attachment 2 at TR 59. She has never stated that she is unwilling to provide the "secured personal commitment" required in the bank's letter.¹² As Ms. Davis

¹¹ A great deal of the interpretive confusion Wilburn attempts to weave results from the fact that the Ms. Davis was not responding to a specific question when delivering the testimony on which Wilburn relies. Motion at 5. The question Mr. McCormick asked was "Did you have any discussion with Mr. Fraseir as to what constituted a secured personal commitment?" After responding to the question, Ms. Davis provided the opinion that she would be deciding at the time of the loan whether or not it would be necessary for her to secure "personal property." See Attachment 2 at TR 58-59.

¹² Moreover, Wilburn loses sight of the fact that while an applicant must have a "reasonable assurance" of a source of funding, just as a bank's assurance need not (and has not) ripened into a legally binding "commitment," an applicant need not be committed to accepting (or using) the financing on which it relied during the application process. As the Commission

clarifies in Attachment 3, the terms in the Huntington Bank letter are indeed acceptable, and despite the fact that she has not yet decided whether she will agree to secure the loan with "personal property" such as her home in particular, she is, however, willing to accept the precise terms contained in the letter to the extent market conditions may justify or require it and is willing to provide the required "secured personal commitment" in order to obtain the loan.¹³ Therefore, Wilburn's mischaracterization of Ms. Davis' deposition testimony also does not form a basis for the addition of a financial issue in this proceeding.

False Certification Issue

A "false certification" issue is not warranted "unless the applicant intended to deceive the Commission when it certified that it was financially qualified." Georgia Public Telecommunications Commission, 7 FCC Rcd 2942, 2948 ¶ 32 (Rev. Bd. 1992). Here, there is no evidence of any "intentional deception" -- in fact, Ms. Davis' financial source repeatedly has assured her of the availability of funds. See Attachment 1 at 2. Under Commission precedent, no "misrepresentation" can be found to exist where an applicant was unaware that information reported to Commission was inaccurate. Sunshine Broadcasting,

repeatedly has recognized:

projected expenditures and sources of funds relied upon by applicants in establishing their financial qualifications frequently change and are rarely carried out as planned.

KRPL, Inc., 5 FCC Rcd 2823, 2824 n.1 (1990). As seen in Attachment 3, consistent with the Commission's flexibility (and in accord with good business sense), upon grant, Ms. Davis intends to secure an actual loan under the most favorable terms commercially available, which also may make the need to secure the loan with "personal property" unnecessary.

¹³ Ms. Davis' husband has agreed to allow Ms. Davis to pledge marital assets to the extent necessary in her pursuit of the permit in this proceeding. See Attachment 4.

Inc., 64 R.R.2d 596, 598 (1987). Therefore, even if it develops that such funding objectively (for some reason unknown to Davis) is "not" available, absent knowledge, such unavailability could not be reported by Davis, and does not warrant the designation of a false certification issue.

Conclusion

Davis has confirmed the availability and suitability of her proposed loan. The loan is in excess of her proposed budget. Consequently, no financial is warranted.

Accordingly, the Motion to Enlarge Issues Against Shellee F. Davis should be denied.

WHEREFORE, it is respectfully requested that for the reasons stated above, the Motion filed on August 23, 1993 for the enlargement of the issues against Shellee F. Davis should be denied.

Respectfully requested,

SHELLEE F. DAVIS

By: 

Dan J. Alpert

Her Attorney

1250 Connecticut Ave.
7th Floor
Washington, DC 20036
(202) 637-9158

September 8, 1993

ATTACHMENT 1

The original of this document will be filed
as soon as it is received

The Huntington National Bank
41 South High Street
P.O. Box 1558
Columbus Ohio 43260



Ralph K. Frasier
Executive Vice President
General Counsel and Secretary
614 463 4647

DECLARATION

I, Ralph K. Frasier, hereby state as follows:

I am an Executive Vice President, General Counsel, Secretary and Cashier of The Huntington National Bank, a national banking association chartered under the laws of the United States with its principal office located in Columbus, Ohio, and banking offices throughout the state of Ohio ("Huntington"). Total assets at June 30, 1993, exceeded \$10 billion.

I am an "Executive Officer" of Huntington as that term is defined and customarily applied in banking law and practice. Under general corporate law and, specifically, under the terms of the Bylaws and Board authorizations of Huntington, I have authority to enter into binding commitments on behalf of Huntington. For more than twenty-five years I have held management and executive positions in the banking industry. During that time I have made hundreds of promises, representations and commitments on behalf of my bank employer. I have never failed to carry out such commitments. To suggest otherwise is offensive.

I have issued a "soft" commitment to Ms. Davis because a firm commitment would be impractical. Indeed, the Commission's processing and procedures make it impractical to issue binding commitments. These proceedings have been underway for almost two years, and with Petitions to Enlarge Issues and other challenges, it is impossible to predict when, if ever, a customer will obtain regulatory clearance. In the interim, the economy, markets, business plans, financial conditions, interests and appetite may change. It is, therefore, unreasonable to expect either the Huntington or its customer to be locked into obligations to be executed far into the future.

I was first approached in December, 1991, by Shellee Davis concerning the application she was intending to submit for former Station WBBY (FM) in Westerville, and the availability of funding from Huntington to finance that project. Ms. Davis and her husband, Reginald Davis, have banked with this institution for a number of years. I personally am well acquainted with Ms. Davis' finances, the success of her past business and her track record in running a successful business, and her standing and reputation

in the community. I also am familiar generally with what had been the stature and stability of Station WBBY in the Columbus community during the period it was operating. As I indicated in the letter that I wrote to Ms. Davis, this institution has been anxious to provide financing to Ms. Davis for her personal and business endeavors. The Davis proposal was all the more interesting and attractive in light of the recent history of a prior operator having successfully operated in the same facility, on the same frequency and in much of the same market.

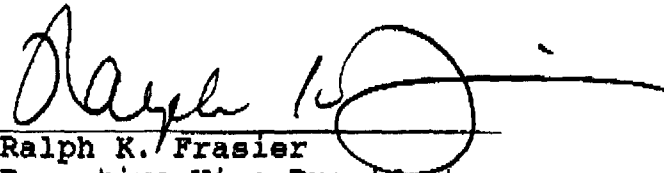
In order to verify the ability of Huntington to provide the funding that was being requested, at the time of her request, I requested that Ms. Davis provide information to me concerning the level of financing she would need and information concerning her current finances in the form of a current balance sheet. That information all was provided. In addition, Ms. Davis and I discussed the project and some of her plans for the station. As a Senior Officer with Huntington, I am very familiar with the institution's lending criteria. Moreover, Ms. Davis' proposal and financial information was reviewed with a seasoned loan officer. Based upon that evaluation, it was the determination at the time that inquiry was made, and remains the understanding of the Huntington today, that funding can and will be provided in accordance with the level of financing requested in the December 27, 1991, letter, and in fact can be provided at the level of financing stated in the March 9, 1992 letter (see attachments). This decision was made with the understanding that Ms. Davis intends, if possible, to lease a large portion of the equipment for the station (which may reduce the amount of loan that will be needed), and that the FCC license may not permissibly be subject to a security interest by this institution. Ms. Davis has kept me informed of the progress of the application, and as I repeatedly have assured her at all times since her request was approved, the anticipated availability of funding has remained in place.

As the letters state, the bank's ability to proceed forward with the proposed loan will be contingent upon Ms. Davis' acquisition of the permit for the station from the FCC, confirmation at the time the loan is to be extended that the Davis' financial condition has not materially changed from that reviewed previously, that all reasonable and ordinary credit criteria are met and a commitment from her to operate the station with appropriate staffing. It is anticipated that funding will be provided at two points above the prime lending rate as may exist at the time of each advance on the loan, and the loan will likely have a five year repayment period with a 6-12 month moratorium on repayment of the principal. We would require that the loan be secured by whatever equipment is purchased by the

station, the intangible assets for the station (i.e., the accounts receivable), and we additionally would require the Davis' secured personal commitment.

The attached letters correctly reflect intentions of this institution to provide funding to Ms. Davis under the conditions stated therein. This institution has not in the past, nor will it in the future, issue any documents which are false, or which fail to accurately reflect the intentions of this institution. I resent any inference to the contrary.

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in dark ink, appearing to read "Ralph K. Frasier", followed by a large, stylized circular flourish or "O" shape.

Ralph K. Frasier
Executive Vice President,
General Counsel,
Secretary and Cashier
The Huntington National Bank

The Huntington National Bank
41 South High Street
P.O. Box 1558
Columbus Ohio 43260



Ralph K. Frasier
Executive Vice President
General Counsel and Secretary
614 463 4647

December 27, 1991

Mrs. Shellee F. Davis
415 East Broad Street
Suite 100
Columbus, Ohio 43215

Dear Shellee:

Thank you for your recent inquiry regarding our interest in providing financing of a venture for you.

Shellee, you know we have been interested for some time in increasing the level of business done with you. With that thrust still in mind, based upon our knowledge of you and your personal finances, and our understanding concerning the value of the project, we believe that we will be able to provide financing in the amount of \$250,000 to finance your project.

We have not had an opportunity to verify the accuracy of the financial information you have provided to us, so obviously, we are not prepared to make a binding loan commitment -- but if the following conditions are met, we believe that a mutually satisfactory arrangement will be secured:

1. You are successful in obtaining approval from the Federal Communications Commission to control and operate a commercial broadcast station in the Columbus, Ohio market.
2. All reasonable and ordinary credit criteria of The Huntington National Bank are met at such time as you have A) Received a construction permit for the station and B) Received from The Huntington National Bank a formal lending commitment; and
3. Appropriate management and staff are acquired to run the station.

Although this does not represent a commitment, this letter reflects the present belief that this Bank will be able to pursue the loan with you to a mutually satisfactory conclusion. The pricing and terms of amortization of any loan commitment will, of course, be contingent upon credit conditions and criteria prevailing at the time of such commitment. However, we contemplate calculating interest on any loan made at a rate not to exceed two percent above the prime lending rate of this Bank at the time of each advance (for your information the current prime lending rate of this Bank is 6-1/2 percent); and, the loan will be for a five year period, and any loan made would be repaid after a 6-12 month moratorium on principal as necessary, in quarterly installments or as otherwise reasonable and consistent with accepted financial projections received at time of borrowing.

Collateral for the loan would be the physical and intangible assets of the station and would include your secured personal commitment.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Ray L. O.", with a large, stylized loop at the end.

RKF/gs

The Huntington National Bank
41 South High Street
P.O. Box 1558
Columbus Ohio 43260



Ralph K. Frasier
Executive Vice President
General Counsel and Secretary
614 463 4647

March 9, 1992

Mrs. Shellee F. Davis
415 East Broad Street
Suite 100
Columbus, Ohio 43215

Dear Shellee:

Thank you for your recent inquiry regarding our interest in providing financing of a venture for you.

Shellee, you know we have been interested for some time in increasing the level of business done with you. With that thrust still in mind, based upon our knowledge of you and your personal finances and our understanding concerning the value of the project, we believe that we will be able to provide financing in the amount of \$350,000 to finance your project.

We have not had an opportunity to verify the accuracy of the financial information you have provided to us, so obviously we are not prepared to make a binding loan commitment -- but if the following conditions are met, we believe that a mutually satisfactory arrangement will be secured:

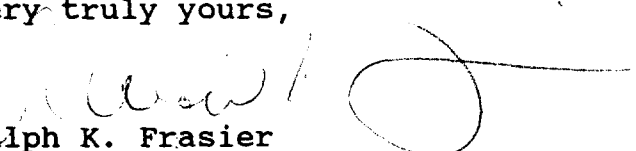
1. You are successful in obtaining approval from the Federal Communications Commission to control and operate a commercial broadcast station in the Columbus, Ohio market.
2. All reasonable and ordinary credit criteria of The Huntington National Bank are met at such time as you have (a) received a construction permit for the station and (b) received from The Huntington National Bank a formal lending commitment; and
3. Appropriate management and staff are acquired to run the station.

Mrs. Shellee F. Davis
Page 2
March 9, 1992

Although this does not represent a commitment, this letter reflects the present belief that this bank will be able to pursue the loan with you to a mutually satisfactory conclusion. The pricing and terms of amortization of any loan commitment will, of course, be contingent upon credit conditions and criteria prevailing at the time of such commitment. However, we contemplate calculating interest on any loan made at a rate not to exceed two percent above the prime lending rate of this bank at the time of each advance (for your information the current prime lending rate of this bank is 6-1/2 percent); the loan will be for a five year period, and any loan made would be repaid after a 6-12 month moratorium on principal as necessary, in quarterly installments or as otherwise reasonable and consistent with accepted financial projections received at time of borrowing.

Collateral for the loan would be the physical and intangible assets of the station and would include your secured personal commitment.

Very truly yours,


Ralph K. Frasier

RKF/nth
cc: Paul B. Brawner

L19Davis

ATTACHMENT 2

1 proposed radio station?

2 A. Yes--the person that I wrote the letter to.

3 Q. And that was whom?

4 A. Paul Casey.

5 Q. Did you meet with Mr. Casey at any time to discuss
6 the proposed radio station?

7 A. Yes.

8 Q. Okay. In relation to the period of time when the
9 application was filed, December 31, can you tell me when you
10 met with Mr. Casey?

11 A. I can't tell you the date because it was when I
12 was in the bank one day, and I just did it. Just did it as
13 a, really as a personal point because Bank Ohio has been my
14 bank, and I was not interested in really doing business with
15 them for a loan, but for personal reasons beyond this radio
16 station application, I just decided to ask them.

17 Q. Okay. How long was the meeting?

18 A. Oh, a few minutes; maybe ten minutes.

19 Q. You just--you didn't make an appointment ahead of
20 time? You happened to be in the bank?

21 A. No.

22 Q. You wanted to see Mr. Casey and you discussed the

1 BY MR. MCCORMICK:

2 Q. You have before you the December 27, 1991 letter
3 from Huntington Bank?

4 A. Um-hum.

5 Q. In the second paragraph, there is a reference to
6 quote, our understanding concerning the value of the
7 project?

8 A. Um-hum.

9 Q. Do you have any knowledge as to what the bank's
10 understanding was as to the value of the project?

11 A. During our conversation, Mr. Frasier and my
12 conversation, we talked about, a bit about BBY. BBY to many
13 people was a very special radio station, and he is a jazz
14 lover, and he understood how valuable the station was to the
15 community, and to bring it back on the air, I guess he was
16 glad to know that I was pursuing it to bring it back on the
17 air, and so as far as the value of the project, and I told
18 him that I would approximately need about \$300,000.

19 Q. Okay. So it's your understanding that his
20 reference to the value of the project was referring to the
21 value to the community of the project, is that right?

22 A. Um-hum.

1 Q. As opposed to the value of a radio station placed
2 in a suburb of Columbus?

3 A. I feel that he has an idea of the value of a radio
4 station and the value of it within the community.

5 Q. And what was, what is the basis of your
6 understanding as to his understanding?

7 A. I don't know. Just, you know, just maybe his
8 thought, being a bank, being a banker, and knowing money,
9 maybe he knows radio stations bring a lot of money.

10 Q. But you didn't discuss with him how much money
11 this radio station would give, is that correct?

12 A. Oh, right. Exactly.

13 Q. And did he refer, in any of your conversations,
14 did he refer to any particular knowledge he had as to the
15 profitability or lack of profitability of station WBBY?

16 A. No.

17 Q. Did you discuss at all the, the profitability or
18 the potential profitability of the proposed radio station?

19 A. Not in monetary terms. Just it could be a good
20 thing.

21 Q. Okay.

22 A. In general terms.

1 MR. KRAVETZ: I may have--can we go off the
2 record?

3 (There was a brief pause in the proceedings.)

4 MR. KRAVETZ: I have no further questions. We're
5 done unless you have redirect?

6 MR. ALPERT: I just might have one or two.

7 MR. KRAVETZ: You're going to keep her here
8 longer?

9 EXAMINATION BY COUNSEL FOR THE APPLICANT SHELLEE
10 F. DAVIS

11 BY MR. ALPERT:

12 Q. I just would have one question to clarify
13 something we started touching on, didn't quite finish.

14 I think you testified earlier that the, that your
15 balance sheets do not include any Britt bank accounts, is
16 that correct?

17 A. Correct.

18 Q. Do the balance sheets include the value of any
19 Britt ownership?

20 A. No.

21 Q. In your stock ownership in Britt broadcasting, I
22 mean Britt Business Systems--

ATTACHMENT 3

The original of this document will be filed
as soon as it is received

DECLARATION

I, Shellee F. Davis, hereby state as follows:

I am an applicant for Channel 280A in Westerville, Ohio. At the time I receive my grant it is my intention to negotiate with Huntington Bank and also to consider placing the loan with other financial institutions to ensure that I am obtaining a loan under the most favorably available terms and conditions. Moreover, to avoid encumbering my home, I may offer to secure any loan I accept with cash or other assets. Therefore, as I stated in my deposition, it has not yet been determined by me whether or not I will need to secure "personal property" such as my home in particular in order to obtain the loan.

This is to confirm that the terms contained in the Huntington Bank letter are acceptable, and in the event I follow through and obtain a loan from Huntington Bank and those terms are commercially competitive, and the bank insists on my accepting those exact terms, I am now and have always been willing to take a loan under those or comparable terms, and am willing to provide to the bank a secured personal commitment.

I declare under penalty of perjury that the foregoing is true and correct.

SHELLEE F. DAVIS



Signed and dated this 8 day of Sept., 1993.